

our Constitution, the constitutional rule is clear: Congress instructs the President by law what to do, and the President faithfully executes those laws.

But what happens if Congress will not instruct clearly? What happens under our Constitution when faithfully executing one law Congress has passed requires the President to fail to faithfully execute another law? How can the President faithfully execute irreconcilably conflicting instructions from Congress?

As a matter of constitutional principle, there is only one logical resolution I can see to this constitutional predicament which Congress has created.

When the matter is sufficiently grave to merit the President's attention, and when Congress sends irreconcilable messages for the President to faithfully execute, a zone of executive discretion must necessarily open to allow the President to make the best decisions for the American people in the area where Congress has sent those irreconcilable mixed signals.

Of course, the instant Congress resolves its conflicting signals, stops speaking out of both sides of its mouth, and sends a clear direction, that zone of executive discretion disappears. Congress has the power. Congress makes the laws. Congress controls the purse. Whatever fiscal path Congress instructs the President to embark on, he must faithfully execute that instruction from Congress.

But Congress can't put the President in the untenable position of having to fail in the "faithful execution" of one set of laws in order to "faithfully execute" another. That is exactly where it seems to me we would put the President if we failed to lift the debt ceiling.

The damage to the country from such failure would be profound. At least 40 cents of every Federal dollar would suddenly stop flowing into the economy. Considering what would have to be done with the remaining 60 cents, it is not very likely that the Federal regulatory process would keep running. That means every job in the country, depending on a Federal permit or Federal approval or a Federal grant or a Federal contract, would likely grind to a halt.

There would be a jump in interest rates that would hit Federal, State, municipal, corporate, and family budgets. A lot of other stuff might also go wrong, but those three are a bare minimum, and they alone would constitute a brutal shock to our struggling economy. The damage would be grave.

Bad enough if Congress instructed the President to do this kind of damage, but do we really expect him to do that sort of damage without our clear instruction? The scale of this damage lights up in sharp contrast to the constitutional predicament Congress would create through Congress's failure and inaction to send clear direction.

The 14th amendment provision, that the public debt of the United States of America "shall not be questioned," may or may not be controlling here. That specific amendment is not my point. My point is a more basic one: How, under our separated powers, when Congress gives conflicting directives, does the President "faithfully execute" those conflicting directives? The conflicting directives problem is ultimately a problem for Congress to solve. But until Congress sorts itself out and gives a clear directive, all that can be constitutionally expected of the President is to do the best he can for the country. He cannot "faithfully execute" conflicting directives.

In a sense, conflicting directives by Congress are a form of abdication by Congress—an abdication of the duty imposed on Congress by article I of the Constitution to make and pass laws. It is only reasonable and proper to infer that the constitutional duty of Congress to make and pass laws implies that the Congress will make and pass laws that are capable of faithful execution by the executive.

A Congress that cannot meet that standard is in no position to complain that the executive branch has usurped its authority. More to the point, the constitutional cure is always right in Congress's hands: Sort out your differences; give the executive branch the direction it is Congress's duty to provide.

To me, at least, this is a reading of the separation of powers in the U.S. Constitution that makes sense, that is consistent with the underlying principles of that great document, that is practical and workable, and that allows for governance rather than paralysis in circumstances when congressional dysfunction deprives the President of the clear legislative direction that by clear implication is Congress's duty to provide.

I hope before we pitch over the looming fiscal precipice, the executive branch gives these views thoughtful consideration.

I yield the floor.

#### ORDER OF PROCEDURE

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, I ask unanimous consent that pursuant to the order of July 21, 2011, and after having notified the Republican leader, we proceed, at 2 p.m. today, to executive session for the consideration of Calendar No. 276, Robert S. Mueller III, of California, to be Director of the Federal Bureau of Investigation. It is my understanding this debate is to take 2 hours; is that true?

The PRESIDING OFFICER. Under the order of July 21, the Senator is correct.

Without objection, the majority leader has the authority under that order.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

#### THE DEBT LIMIT

Mr. TOOMEY. Mr. President, I will address the issue of the pending debt limit.

Although the President's most recent speech on this did not give me great cause for confidence, I still hope he will drop his insistence on the huge tax increase in return for making the meaningful spending cuts and reforms that we need. I hope, most of all, he will drop his opposition to putting our budget on a path to balance.

That is the big item I think we need in this debate. I think we ought to be willing to raise the debt limit, as I am, if in return for that we would have a commitment of the President to put us on a path to a balanced budget, as President Clinton committed to and he achieved with a Republican Congress back in 1995. I hope we will reach an agreement that solves the underlying problem prior to August 2.

I am here this afternoon because I think we all have to acknowledge that we are late in the process, and I think it is indisputable that there is at least a possibility that August 2 will arrive without having raised the debt ceiling, whatever our personal preferences might be about that.

In my view, since that is a possibility, it is essential that the Federal Government have a plan for what we will do if those circumstances arise. Specifically, what is going to have to happen is the government will have to spend some period of time—probably a very brief time, but a period of time nevertheless—operating exclusively on the ongoing tax revenues that will be coming in without the ability to go out and borrow additional money. That means necessarily that somebody is going to make decisions about prioritizing payments, by some criteria that somebody will come up with.

Rather than simply wait and stumble into this period and discover what somebody has come up with, I think we ought to lay out a plan. So that is what my recently introduced legislation is meant to do.

Some of us have made this argument for a long time. We saw this day coming, and we have known that we would face a difficult time raising this debt ceiling. It has always been possible that we would not do it by August 2. I have been arguing that we ought to have this plan.

Unfortunately, the administration has persisted in denying that it is even possible to prioritize. It is ridiculous. It is going to happen. They are predicting that we are going to default on our bonds if we go past August 2 without having raised the debt ceiling.

In a letter to Congress, Treasury Secretary Geithner said:

This would be an unprecedented event in American history. A default would inflict catastrophic, far-reaching damage on our Nation's economy.

President Obama said this in May of this year:

If investors around the world thought that the full faith and credit of the United States